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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 22nd March, 2011:—

BILL NO. 18 OF 2011

A Bill further to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and to make consequential amendments in certain other enactments.

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Laws (Amendment) Act, 2011.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

Insertion of
new section 2A.

2. After section 2 of the Banking Regulation Act, 1949 (hereafter in this Chapter referred to as the principal Act), the following section shall be inserted, namely:—

10 of 1949.

Competition
Act not to
apply in
certain cases.

“2A. Notwithstanding anything to the contrary contained in section 2, nothing contained in the Competition Act, 2002 shall apply to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or co-operative bank or multi-state co-operative bank in respect of the matters relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition under—

12 of 2003.

(i) this Act;

23 of 1955.

(ii) the State Bank of India Act, 1955;

38 of 1959.

(iii) the State Bank of India (Subsidiary Banks) Act, 1959;

5 of 1970.

(iv) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

21 of 1976.

(v) the Regional Rural Banks Act, 1976;

40 of 1980.

(vi) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

39 of 2002.

(vii) the Multi-State Co-operative Societies Act, 2002; and

(viii) any State law relating to co-operative societies.”.

Amendment of
section 5.

3. In section 5 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

‘(a) “approved securities” means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time;’.

Amendment of
section 12.

4. In section 12 of the principal Act, in sub-section (1),—

(i) for clause (ii), the following clause shall be substituted, namely:—

1 of 1956.

“(ii) that, notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of—

(a) equity shares only, or

(b) equity shares and preference shares:

Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued:

Provided further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956;’;

1 of 1956.

(ii) the proviso shall be omitted;

(iii) sub-section (2) shall be omitted.

5. After section 12A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 12B.

‘12B. (1) No person (hereinafter referred to as “the applicant”) shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent. or more of the paid-up share capital of such banking company or entitles him to exercise five per cent. or more of the voting rights in such banking company.

Regulation of acquisition of shares or voting rights.

Explanation 1.—For the purposes of this sub-section,—

1 of 1956.

(a) “relative” shall have the meaning assigned to it in section 6 of the Companies Act, 1956;

(b) “associate enterprise” means a company, whether incorporated or not, which,—

(i) is a holding company or a subsidiary company of the applicant; or

(ii) is a joint venture of the applicant; or

(iii) controls the composition of the Board of Directors or other body governing the applicant; or

(iv) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or

(v) is able to obtain economic benefits from the activities of the applicant;

(c) persons shall be deemed to be “acting in concert” who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the banking company.

Explanation 2.—For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

(2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that—

(a) in the public interest; or

(b) in the interest of banking policy; or

(c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or

(d) in view of the emerging trends in banking and international best practices; or

(e) in the interest of the banking and financial system in India,

the applicant is a fit and proper person to acquire shares or voting rights:

Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1):

Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.

(3) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in any of the meetings of the banking company.

(4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.

(5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (1) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.

(6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:

Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.

(7) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.

(8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent. of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company:

Provided that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.'

6. In section 13 of the principal Act,—

(i) for the words "paid-up value of the said shares" occurring at the end, the words "price at which the said shares are issued" shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

Explanation.—For the removal of doubts, it is hereby declared that the expression "price at which the said shares are issued" shall include amount or value of premium on such shares.'

7. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (1),—

(a) for the words “shall maintain in India”, the words “shall maintain in India on a daily basis” shall be substituted;

(b) for the words “at least three per cent.”, the words “such per cent.” shall be substituted;

(c) after the words “second preceding fortnight”, the words “as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country” shall be inserted;

(d) in the *Explanation*, in clause (a), in sub-clause (ii), the words “or from the Development Bank” shall be omitted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If the balance held by such banking company at the close of business on any day is below the minimum specified under sub-section (1), such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continue further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(1B) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

(1C) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities.”.

8. In section 24 of the principal Act,—

Amendment of
section 24.

(a) in sub-section (4), in clause (a), the words, brackets and letter “clause (a) of” shall be omitted;

(b) in sub-section (5), in clause (b), the words, brackets and letter “clause (a) of” shall be omitted;

(c) in sub-section (8), the words, brackets and letter “clause (a) of” shall be omitted.

9. After section 26 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
26A.

‘26A. (1) The Reserve Bank shall establish a Fund to be called the “Depositor Education and Awareness Fund” (hereafter in this section referred to as the “Fund”).

Establishment
of Depositor
Education and
Awareness
Fund.

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Providing that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in sub-section (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.'

10. After section 29 of the principal Act, the following section shall be inserted, namely:—

29A. (1) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

(2) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account by one or more of its officers or employees or other persons.

(3) The provisions of sub-sections (2) and (3) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.—"associate enterprise" in relation to a banking company includes an enterprise which—

(i) is a holding company or a subsidiary company of the banking company; or

(ii) is a joint venture of the banking company; or

(iii) is a subsidiary company or a joint venture of the holding company of the banking company; or

(iv) controls the composition of the Board of directors or other body governing the banking company; or

(v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(vi) is able to obtain economic benefits from the activities of the banking company.'

11. After Part IIA of the principal Act, the following Part shall be inserted, namely:—

Insertion of
new Part
IIAB.

"PART IIAB

SUPERSESSION OF BOARD OF DIRECTORS OF BANKING COMPANY.

36ACA. (1) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.

(2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of Directors of a banking company, notwithstanding anything contained in the Companies Act, 1956,—

(a) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such banking company, or by a resolution passed in general meeting of such banking company, shall, until the Board of Directors of such banking company is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such banking company.

(5) The Reserve Bank may constitute, in consultation with the Central Government, a committee of three or more persons who have experience in law, finance, banking, economics or accountancy to assist the Administrator in the discharge of his duties.

(6) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(7) The salary and allowances to the Administrator and the members of the committee constituted under sub-section (5) by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned banking company.

(8) On and before the expiration of two months before the expiry of the period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the banking company, shall call the general meeting of the company to elect new directors and reconstitute its Board of Directors.

Supersession
of Board of
Directors in
certain cases.

1 of 1956.

1 of 1956.

(9) Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association, no person shall be entitled to claim any compensation for the loss or termination of his office.

(10) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of such banking company has been reconstituted.”;

Amendment of
section 46.

12. In section 46 of the principal Act,—

(a) in sub-section (1), for the words “and shall also be liable to fine”, the words “or with fine, which may extend to one crore rupees or with both” shall be substituted;

(b) in sub-section (2),—

(i) for the words “two thousand rupees”, the words “twenty lakh rupees” shall be substituted;

(ii) for the words “one hundred rupees”, the words “fifty thousand rupees” shall be substituted;

(c) in sub-section (4),—

(i) for the words “fifty thousand rupees”, the words “one crore rupees” shall be substituted;

(ii) for the words “two thousand and five hundred rupees”, the words “one lakh rupees” shall be substituted.

13. In section 47A of the principal Act, in sub-section (1),—

(a) in the opening portion, for the words, brackets and figures “sub-section (3) or sub-section (4)”, the words, brackets and figures “sub-section (2) or sub-section (3) or sub-section (4)” shall be substituted;

(b) for sub-clauses (a) and (b), the following sub-clauses shall be substituted, namely:—

“(a) where the contravention or default is of the nature referred to in sub-section (2) of section 46, a penalty not exceeding twenty lakh rupees in respect of each offence and if the contravention or default persists, a further penalty not exceeding fifty thousand rupees for everyday, after the first day, during which the contravention or default continues;

(b) where the contravention is of the nature referred to in sub-section (3) of section 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(c) where the contravention or default is of the nature referred to in sub-section (4) of section 46, a penalty not exceeding one crore rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to one lakh rupees for everyday, after the first day, during which the contravention or default continues.”.

Amendment of
section 47A.

14. In section 51 of the principal Act, in sub-section (1),—

(a) after the words “provisions of sections”, the figure and letter “2A,” shall be inserted;

(b) before the words, brackets, figures and letters “sub-sections (1B), (1C) and (2) of sections 30”, the figures and letter “29A,” shall be inserted.

Amendment of
section 51.

15. In section 56 of the principal Act,—

Amendment of
section 56.

(a) in clause (j) relating to substitution of section 18,—

(A) in sub-section (1),—

(i) for the words “State Co-operative Bank”, the words “a co-operative bank” shall be substituted;

(ii) for the brackets and words ‘(hereinafter referred to as a “scheduled State co-operative bank”)’, the brackets and words ‘(hereinafter referred to as a “scheduled co-operative bank”)’ shall be substituted;

(iii) for the words “at least three per cent.”, the words “such per cent.” shall be substituted; and

(iv) after the words “second preceding fortnight”, the words “as the Reserve Bank may specify, by notification in the Official Gazette, from time to time having regard to the needs for securing the monetary stability in the country” shall be inserted;

(B) in the *Explanation*,—

(i) in clause (a),—

(1) in sub-clause (ii), the words “the Development Bank” shall be omitted;

(2) in sub-clauses (iii) and (iv), for the words “State co-operative bank”, the words “Co-operative Bank” shall be substituted;

(ii) in clause (c), for the letter and words “a corresponding new bank”, the letters and words “a corresponding new bank or IDBI Bank Ltd.” shall be substituted;

(C) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If the balance held by co-operative bank referred to in sub-clause (cc) of clause (c) of section 56 of the Banking Regulation Act, 1949, at the close of business on any day is below the minimum specified under sub-section (1), such co-operative bank shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(1B) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting co-operative bank, that such defaulting co-operative bank had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

(1C) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any co-operative bank such exemptions from the provisions of this section as it thinks fit with reference to all or any of its officers or with reference to the whole or any part of its assets and liabilities.”;

(b) in clause (o) relating to the modification of section 22,—

(A) in sub-section (1),—

(i) clause (a) shall be omitted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that nothing in this sub-section shall apply to a primary credit society carrying on banking business on or before the commencement of the Banking Laws (Amendment) Act, 2011, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.”;

(B) in sub-section (2),—

(i) for the words “every primary credit society which becomes a primary co-operative bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary co-operative bank”, the words, brackets and figures “every primary credit society which had become a primary co-operative bank on or before the commencement of the Banking Laws (Amendment) Act, 2011, shall before the expiry of three months from the date on which it had become a primary co-operative bank” shall be substituted;

(ii) the words “other than a primary credit society” shall be omitted;

(iii) in the proviso,—

(a) in clause (ii), for the words “thereafter, or”, the word “thereafter,” shall be substituted;

(b) clause (iii) shall be omitted;

(c) in clause (q) relating to modification of section 24,—

(a) sub-clause (i) shall be omitted;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

(ii) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) A scheduled co-operative bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other co-operative bank, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent. of the total of its demand and time liabilities in India as on last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall be maintained in such form and manner, as may be specified in such notification.”;

(d) after clause (ri), the following clause shall be inserted, namely:—

‘(ria) in section 26A, for the words “banking companies”, the words “co-operative bank” shall be substituted;’;

(e) in clause (s), in the opening portion, for the words and figures, "sections 29 and 30", the word and figures "section 29" shall be substituted;

(f) after clause (s), the following clause shall be inserted, namely:—

'(sa) for section 30, the following section shall be substituted, namely:—

"30. (1) Without prejudice to anything contained in any other law for the time being in force, where the Reserve Bank is satisfied that it is necessary in the public interest or in the interest of the co-operative bank or its depositors so to do, it may at any time by general or special order direct that an additional audit of the co-operative bank accounts, for any such transactions or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint a person duly qualified under any law for the time being in force to be an auditor of companies to conduct such audit, and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the co-operative bank.

(2) The expenses of, or incidental to, the additional audit specified in the order made by the Reserve Bank shall be borne by the co-operative bank.

(3) The auditor referred to in sub-section (1) shall have such powers, exercise such functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by section 227 of the Companies Act, 1956 and also that of the auditors, if any, appointed by the law establishing, constituting or forming the co-operative bank to the extent the provisions of the Companies Act, 1956 are not inconsistent with the provisions of such law.

(4) In addition to the matters referred to in the order under sub-section (1) the auditor shall state in his report—

(a) whether or not the information and explanation required by him have been found to be satisfactory;

(b) whether or not the transactions of the co-operative bank which came to his notice have been within the powers of the co-operative bank;

(c) whether or not the returns received from branch offices of the co-operative bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss accounts, shows a true balance or profit or loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the Reserve Bank and the shareholders of the co-operative bank." '.

CHAPTER III

AMENDMENT TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

Amendment of
section 3.

16. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970—

5 of 1970.

(a) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may in consultation with the Reserve Bank and by notification in the Official Gazette increase or reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.”;

(b) in sub-section (2B), in clause (c), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(c) in sub-section (2BB), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(d) in sub-section (2BBA), in clause (a), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(e) in sub-section (2C), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(f) in sub-section (2E),—

(i) for the words “one per cent.”, the words “ten per cent.” shall be substituted;

(ii) in the second proviso, for the words “no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.”, the words “no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent.” shall be substituted.

CHAPTER IV

AMENDMENT TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

Amendment of
section 3.

17. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980,—

40 of 1980.

(a) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may, in consultation with the Reserve Bank, and by notification in the Official Gazette increase or reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.”;

(b) in sub-section (2B), in clause (c), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(c) in sub-section (2BB), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(d) in sub-section (2BBA), in clause (a), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(e) in sub-section (2C), after the words “public issue”, the words “or rights issue or by issue of bonus shares” shall be inserted;

(f) in sub-section (2E),—

(i) for the words “one per cent.”, the words “ten per cent.” shall be substituted;

(ii) in the second proviso, for the words “no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.”, the words “no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent.” shall be substituted.

CHAPTER V

MISCELLANEOUS

18. The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the third column thereof.

Amendment
of certain
enactments.

THE SCHEDULE

(See section 18)

| Sl. No. | Short Title | Amendment |
|---------|---|---|
| 1. | The State Financial Corporation Act, 1951 (63 of 1951). | In section 7, in sub-section (3), the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 2. | The State Bank of India Act, 1955 (23 of 1955). | In section 12, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 3. | The State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959). | In section 20, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 4. | The Warehousing Corporations Act, 1962 (58 of 1962). | In section 5, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 5. | The Regional Rural Banks Act, 1976 (21 of 1976). | In section 7, the words and figures "and shall also be deemed to be approved securities for the purposes of the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 6. | The Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 (23 of 1993). | In section 10, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 7. | The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997 (7 of 1997). | In section 11, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |
| 8. | The Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002). | In section 17, the words and figures "and the Banking Regulation Act, 1949" shall be omitted. 10 of 1949. |

STATEMENT OF OBJECTS AND REASONS

The Banking Regulation Act, 1949 being the law relating to banking has been in force for more than six decades. It, *inter alia*, empowers the Reserve Bank to regulate and supervise the banking sector. The banking companies are now operating in a liberalised environment. In this scenario, it has become necessary that the banking companies in India are enabled to raise capital in accordance with the international best practices. Therefore, it is proposed to—

- (a) enable the nationalised banks to increase or decrease the authorised capital with approval from the Central Government and the Reserve Bank without being limited by the ceiling of a maximum of three thousand crores of rupees;
- (b) provide the nationalised banks to issue two additional instruments (“bonus shares” and “rights issue”) for accessing the capital market to raise capital required for expansion of banking business;
- (c) raise the ceiling on voting rights of shareholders of nationalised banks from one per cent. to ten per cent.;
- (d) make provisions to ensure that control of banking companies is in the hands of fit and proper persons, it should be mandatory for the persons to obtain prior approval from the Reserve Bank who propose to acquire five per cent. or more of the share capital of a banking company;
- (e) confer power upon the Reserve Bank to impose such conditions as it deems necessary while granting such approval for acquisitions of five per cent. or more share capital of a banking company (including specifying acquisition of a minimum percentage of shares in a banking company) if it considers necessary; and
- (f) remove the existing restriction on voting rights limited to ten per cent. of the total voting rights of all the shareholders of the banking company.

2. Taking advantage of the liberalised environment, banking companies are engaging in multifarious activities through the medium of associate enterprises. It has, therefore, become necessary for the Reserve Bank, as the regulator of the banking companies, to be aware of the financial impact of the business of such enterprises on the financial position of the banking companies. It is, therefore, proposed to confer power upon the Reserve Bank to call for information and returns from the associate enterprises of banking companies also and to inspect the same, if necessary.

3. Under the existing provision contained in section 36AA of the Banking Regulation Act, 1949, the Reserve Bank has, *inter alia*, power to remove any director or other officers of a banking company, but such power is not adequate if the entire Board of directors of a banking company is functioning in a manner detrimental to the interest of the depositors or the banking company itself. It is, therefore, proposed to confer power upon the Reserve Bank to supersede the Board of directors of a banking company for a total period not exceeding twelve months and appoint an administrator to manage the banking company during the said period.

4. The Part V of the Banking Regulation Act, 1949 applies to co-operative societies subject to modifications which, *inter alia*, allow a primary co-operative society to carry on business of banking till it has been granted a licence or a notice is notified that the licence cannot be granted to it. For a sound and healthy banking system and to protect the interest of depositors, it has become necessary to ensure that only the co-operative societies licensed by the Reserve Bank should carry on the business of banking by fulfilling all the requirements specified by the Reserve Bank and it has become essential to provide the time

limit of one year to be extended to three years within which a primary credit society should carry on the business of banking or stop the business of banking.

5. Under the existing provisions of the Competition Act, 2002, the Competition Commission of India has power to regulate combination, which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. It is proposed to insert a new section 2A in the Banking Regulation Act, 1949 so as to exempt mergers of the banking companies from the applicability of the provisions of the Competition Act, 2002. The exemption of mergers of banking companies from the scrutiny of the Competition Commission of India would allow the Reserve Bank to approve mergers of banking companies in public or depositors' interest, in the interest of the banking system in India and to secure the proper management of the banking company in a timely manner without waiting for the approval of the Competition Commission of India.

6. The Banking Regulation (Amendment) Bill, 2005 was introduced in the Lok Sabha on the 13th May, 2005 to strengthen the Reserve Bank's supervisory and regulatory powers over the banking sector. The Bill was referred to the Standing Committee on Finance for examination and report thereon. Based on the recommendations of the Standing Committee, it was decided to move official amendments to the Bill in the Lok Sabha, but the Bill could not be taken up for consideration and lapsed due to dissolution of the Lok Sabha. The present Bill incorporates certain provisions of the Banking Regulation (Amendment) Bill, 2005.

7. In addition to the changes proposed in paragraphs 1 to 5, it is also proposed to,—

- (a) enable the banking companies to issue preference shares subject to regulatory guidelines of the Reserve Bank;
- (b) align the restriction on commission, etc., on sale of shares to issue price rather than to the paid-up value of shares;
- (c) establish a "Depositor Education and Awareness Fund" to take over in operative deposit accounts which have not been claimed or operated for a period of ten years or more;
- (d) substantially increase the penalties and fine for some violations of the Banking Regulation Act, 1949;
- (e) confer power upon the Reserve Bank to levy penal interest in case of non-maintenance of required cash reserve ratio;
- (f) confer power upon the Reserve Bank to order a special audit of co-operative banks in public interest for a more effective supervision of co-operative banks.

8. The Banking Laws (Amendment) Bill, 2011 seeks to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 to make the regulatory powers of Reserve Bank more effective and to increase the access of the nationalised banks to capital market to raise capital required for expansion of banking business and also to make certain other consequential amendments in certain other enactments.

9. The Bill seeks to achieve the above objects.

PRANAB MUKHERJEE.

NEW DELHI;
The 9th March, 2011.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill proposes to confer power upon the Reserve Bank to specify approved securities.

Clause 4 of the Bill proposes to empower the Reserve Bank to issue guidelines so as to specify the class of preference shares, the extent of issue of each class of such preference shares, and the terms and conditions subject to which, the preference shares may be issued.

Clause 5 of the Bill confers power upon the Reserve Bank to specify different criteria for acquisition of shares or voting rights in different percentages. This clause further empowers the Reserve Bank to specify the minimum percentage of shares to be acquired in a banking company by an applicant.

Clause 7 of the Bill confers power upon the Reserve Bank to specify the cash reserve ratio for select banks. This clause further confers power upon the Reserve Bank to specify the conditions subject to which the select banks would be exempt from provisions of maintenance of specified level of cash reserve ratio.

Clause 9 of the Bill confers power upon the Reserve Bank to specify the rate of interest on unclaimed deposit. This clause further confers power upon the Reserve Bank to specify the purposes for which the Depositor Education and Awareness Fund would be utilised. This clause also confers power upon the Reserve Bank to notify an Authority or Committee to administer the Depositor Education and Awareness Fund.

Clause 11 of the Bill confers power upon the Reserve Bank to specify the rules of procedure for the Committee to help the Administrator appointed for the superseded banks. This clause further confers power upon the Reserve Bank to specify the periodicity of the meetings and rules of procedure, salary and allowances payable to the members of the Committee or Administrator.

Clause 15 of the Bill confers powers upon the Reserve Bank to specify the cash reserve ratio for select co-operative banks. This clause further confers power upon the Reserve Bank to specify the conditions subject to which the select co-operative banks would be exempt from provisions of maintenance of specified level of cash reserve ratio. This clause also confers power upon the Reserve Bank to specify such percentage of value of assets, in such form and manner, which shall be maintained in India by select co-operative banks.

The matters in respect of which the notification or guidelines are issued or specified are all matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is of a normal character.

BILL NO. 22 OF 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title and commencement. 1. (1) This Act may be called the Constitution (One Hundred and Fifteenth Amendment) Act, 2011.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Insertion of new article 246A. 2. After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to goods and services tax. ‘246A. Notwithstanding anything contained in articles 246 and 254, Parliament and the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by that State respectively.

Provided that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—For the purpose of this article, “State” includes a Union territory with Legislature.’.

| | |
|---|--------------------------------|
| 3. In article 248 of the Constitution, in clause (1), for the word “Parliament”, the words, figures and letter “Subject to article 246A, Parliament” shall be substituted. | Amendment of article 248. |
| 4. In article 249 of the Constitution, in clause (1), after the words “with respect to”, the words “goods and services tax or” shall be inserted. | Amendment of article 249. |
| 5. In article 250 of the Constitution, in clause (1), after the words “with respect to”, the words “goods and services tax or” shall be inserted. | Amendment of article 250. |
| 6. In article 268 of the Constitution, in clause (1), the words “and such duties of excise on medicinal and toilet preparations” shall be omitted. | Amendment of article 268. |
| 7. Article 268A of the Constitution [as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003] shall be omitted. | Omission of article 268A. |
| 8. In article 269 of the Constitution, in clause (1), after the words “consignment of goods”, the words, figures and letter “except as provided in article 269A” shall be inserted. | Amendment of article 269. |
| 9. After article 269 of the Constitution, the following article shall be inserted, namely:— | Insertion of new article 269A. |

‘269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be prescribed by Parliament by law.

Explanation I.—For the purposes of this clause, supply of goods or of services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

Explanation II.—For the purpose of this article, “State” includes a Union territory with Legislature.

(2) Parliament may, by law, formulate the principles for determining when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.’.

| | |
|--|--|
| 10. In article 270 of the Constitution,— | Amendment of article 270. |
| (i) in clause (1), for the words, figures and letter “articles 268, 268A and 269”, the words, figures and letter “articles 268, 269 and 269A” shall be substituted; | |
| (ii) after clause (1), the following clause shall be inserted, namely:— | |
| “(1A) Goods and services tax levied and collected by the Government of India shall also be distributed between the Union and the States in the manner provided in clause (2).”. | |
| 11. In article 271 of the Constitution, after the words “in those articles”, the words “except the goods and services tax” shall be inserted. | Amendment of article 271. |
| 12. After article 279 of the Constitution, the following articles shall be inserted, namely:— | Insertion of new articles 279A and 279B. |
| ‘279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Fifteenth Amendment) Act, 2011, by order, constitute a Council to be called the Goods and Services Tax Council. | Goods and Services Tax Council. |
| (2) The Goods and Services Tax Council shall consist of the following members, namely:— | |
| (a) the Union Finance Minister Chairperson; | |
| (b) the Union Minister of State in charge of Revenue ... Member; | |
| (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government..... Members. | |

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to or exempted from the goods and services tax;

(c) the threshold limit of turnover below which goods and services tax may be exempted;

(d) the rates of goods and services tax; and

(e) any other matter relating to the goods and services tax, as the Council may decide.

(5) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(6) One-third of the total number of members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(7) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(8) Every decision of the Goods and Services Tax Council taken at a meeting shall be with the consensus of all the members present at the meeting.

(9) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Explanation.—For the purposes of this article, “State” includes a Union territory with Legislature.

279B. (1) Parliament may, by law, provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate any dispute or complaint referred to it by a State Government or the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under article 279A that results in a loss of revenue to a State Government or the Government of India or affects the harmonised structure of the goods and services tax.

(2) The Goods and Services Tax Dispute Settlement Authority shall consist of a Chairperson and two other members.

(3) The Chairperson of the Goods and Services Tax Dispute Settlement Authority shall be a person who has been a Judge of the Supreme Court or Chief Justice of a High Court to be appointed by the President on the recommendation of the Chief Justice of India.

(4) The two other members of the Goods and Services Tax Dispute Settlement Authority shall be persons of proven capacity and expertise in the field of law, economics or public affairs to be appointed by the President on the recommendation of the Goods and Services Tax Council.

(5) The Goods and Services Tax Dispute Settlement Authority shall pass suitable orders including interim orders.

(6) A law made under clause (1) may specify the powers which may be exercised by the Goods and Services Tax Dispute Settlement Authority and provide for the procedure to be followed by it.

(7) Notwithstanding anything in this Constitution, Parliament may by law provide that no Court other than the Supreme Court shall exercise jurisdiction in respect of any such adjudication or dispute or complaint as is referred to in clause (1).

Explanation.—For the purpose of this article, “State” includes a Union territory with Legislature.’.

13. In article 286 of the Constitution,—

Amendment of article 286.

(i) in clause (1),—

(A) for the words “the sale or purchase of goods where such sale or purchase takes place”, the words “the supply of goods or of services or both, where such supply takes place” shall be substituted;

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs, the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words “sale or purchase of goods takes place”, the words “supply of goods or of services or both” shall be substituted;

(iii) for clause (3), the following clauses shall be substituted, namely:—

“(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may by law specify.

(4) Nothing in clause (3) shall apply to a law of a State insofar as it imposes or authorises the imposition of goods and services tax.”.

14. In article 366 of the Constitution,—

Amendment of article 366.

(i) after clause (12), the following clause shall be inserted, namely:—

‘(12A) “goods and services tax” means any tax on supply of goods or services or both except taxes on the supply of the following goods, namely:—

- (i) petroleum crude;
- (ii) high speed diesel;
- (iii) motor spirit (commonly known as petrol);
- (iv) natural gas;
- (v) aviation turbine fuel; and
- (vi) alcoholic liquor for human consumption.’;

(ii) clause (29A) shall be omitted.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letters “article 162, article 241, article 279A or article 279B” shall be substituted.

Amendment of article 368.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

Amendment of Sixth Schedule.

(i) in clause (c), the word “and” occurring at the end shall be omitted;

(ii) in clause (d), the word “and” shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) taxes on entertainment and amusements.”.

Amendment
of Seventh
Schedule.

17. In the Seventh Schedule to the Constitution,—

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

“84. Duties of excise on the following goods manufactured or produced in India, namely:—

- (a) petroleum crude;
- (b) high speed diesel;
- (c) motor spirit (commonly known as petrol);
- (d) natural gas;
- (e) aviation turbine fuel; and
- (f) tobacco and tobacco products.”;

(ii) entries 92 and 92C shall be omitted;

(b) in List II — State List,—

(i) for entry 52, the following entry shall be substituted, namely:—

“52. Taxes on the entry of goods into a local area for consumption, use or sale therein to the extent levied and collected by a Panchayat or a Municipality.”;

(ii) for entry 54, the following entry shall be substituted, namely:—

“54. Taxes on the sale, other than sale in the course of inter-State trade or commerce or sale in the course of international trade and commerce of, petroleum crude, high speed diesel, natural gas, motor spirit (commonly known as petrol), aviation turbine fuel and alcoholic liquor for human consumption.”;

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

“62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.”.

Transitional
provision.

18. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Power of the
President to
remove
difficulties.

19. (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The scheme of the Constitution does not provide for any concurrent taxing powers to the Union as well as the States. It is proposed to introduce the goods and services tax and for this purpose to amend the Constitution conferring simultaneous power on Parliament as well as the State Legislatures including every Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax would replace a number of indirect taxes presently being levied by the Central Government and the State Governments and is intended to remove cascading of taxes and provide a common national market for goods and services. The proposed Central and State goods and services tax would be levied on all transactions involving supply of goods and services except those that are exempt or kept out of the purview of the goods and services tax.

2. The proposed Bill which seeks further to amend the Constitution, *inter alia*, provides for—

- (a) subsuming of various Central and State indirect taxes and levies like Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty (CVD), Special Additional Duty of Customs (SAD), Central Surcharges and Cesses (excluding those applicable to income-tax, customs duties and to excise duties so far as they relate to goods outside the purview of the goods and services tax);
- (b) subsuming of State VAT/Sales Tax, entertainment tax (unless it is levied by the local bodies), Luxury Tax, Taxes on lottery, betting and gambling, tax on advertisements, State Cesses and Surcharges insofar as they relate to supply of goods and services and Entry Tax, not levied by local bodies;
- (c) levy of Integrated GST (IGST) on inter-State transactions of goods and services;
- (d) conferring simultaneous power upon Parliament and the State Legislatures to make laws governing goods and services tax;
- (e) coverage of goods other than crude petroleum, diesel, pertol, aviation turbine fuel, natural gas and alcohol for human consumption under the goods and services tax for the levy of goods and services tax;
- (f) creation of a Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits;
- (g) enabling the setting up of a Goods and Services Tax Dispute Settlement Authority, which may be approached by the affected Government (whether the Centre or a State) seeking redressal for any loss caused by any action due to a deviation from the recommendations made by the Goods and Services Tax Council or for adversely affecting the harmonious structure and implementation of the goods and services tax;
- (h) empowering District Councils and Regional Councils also to levy tax on entertainment and amusement;
- (i) enabling the levy of goods and services tax on sale or purchase of newspapers and advertisements published therein;
- (j) permitting only Municipalities and Panchayats to levy and collect tax on entry of goods in a local area for consumption, use or sale therein;

(k) allowing States to levy tax on intra-State sale of goods kept outside the purview of the goods and services tax, namely, Petroleum crude, High Speed Diesel, Natural Gas, Motor Spirit (Petrol), Aviation Turbine Fuel and Alcoholic Liquor for human consumption.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

PRANAB MUKHERJEE.

The 16th March, 2011.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

**[Copy of letter No. 31011/04/2009, dated 16.3.2011 from Shri Pranab Mukherjee,
Minister of Finance to the Secretary-General, Lok Sabha]**

The President, having been informed of the subject matter of the proposed Bill, recommends, under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 in Lok Sabha and also the consideration of the Bill.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert new articles 279A relating to constitution of Goods and Services Tax Council and 279B relating to establishment of Goods and Services Tax Dispute Settlement Authority in the Constitution. The proposed new article 279A seeks to empower the President to constitute a Council to be called the Goods and Services Tax Council consisting of the Union Finance Minister as its Chairperson and Union Minister of State in-charge of Revenue and the State Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government as their Members.

The proposed new article 279B seeks to provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate dispute or complaint referred to it by a State Government or the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under the proposed article 279A that results in a loss of revenue to a State Government or the Government of India or affects the harmonised structure of the goods and services tax.

There are no direct financial implications on account of the proposal. However, the creation of the Goods and Services Tax Council and the Goods and Services Tax Dispute Settlement Authority will involve creation of some posts. Given that the introduction of goods and services tax will make the Indian trade and industry much more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on these bodies would be minuscule.

It is not practicable to make an estimate of the expenditure, both recurring and non-recurring on account of the above. However, such expenditure would be considerably marginal.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a Council to be called the Goods and Services Tax Council and another article 279B establishing the Goods and Services Tax Disputes Settlement Authority. Clause (1) of the proposed new article 279A provides that the President shall, within sixty days from the date of the commencement of the Constitution (One Hundred and Fifteenth Amendment) Act, 2011, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (7) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedure, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

T. K. VISWANATHAN,
Secretary-General.